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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,182	03/31/2004	Connie Marchek	DEP5291	7090
27777	7590	12/05/2008		
PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003			EXAMINER RAMANA, ANURADHA	
			ART UNIT	PAPER NUMBER
			3775	
			MAIL DATE	DELIVERY MODE
			12/05/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/815,182

**Applicant(s)**

MARCHEK ET AL.

**Examiner**

Anu Ramana

**Art Unit**

3775

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6, 8 and 10-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8 and 10-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/5508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

The indicated allowability of claims 7-8, 10 and 11-16 is withdrawn in view of the new rejections made in this office action.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

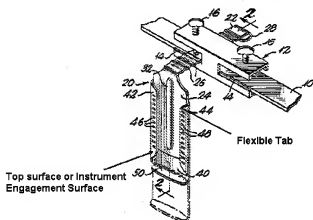
Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Koros (US 6,139,493).

Koros discloses an adjustable retractor blade assembly including: a fixed blade 44; an adjustable blade 54; and a leaf spring 100 including a flexible tab and a projection that is movable between a first or disengaged position in which the tab is generally or almost coplanar to the adjustable blade and a second or engaged position in which the tab is generally transverse to the adjustable blade (Figs. 1 and 6, col. 6, lines 21-67 and col. 7, lines 1-44).

Claims 1, 3-6, 8 and 10-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Gauthier (US 3,384,078).

Gauthier discloses an adjustable retractor blade assembly including: a fixed blade 24; an adjustable blade 40 with flexible tabs or edges 44 capable of being moved between a first position where the tab is generally or almost coplanar with the adjustable blade (position shown in Fig. 1) and a second position where the tab is generally or almost transverse or crosswise to the adjustable blade (the tab could be bent away such that the tabs are near perpendicular to the adjustable blade), the tab including a projection (corresponding to a recess 46) that engages a recess (corresponding to a rib

34 or stop) in the adjustable blade (as shown in Figs. 1 and 4). It is noted that the blade assembly is formed of a resilient deformable material and thus meets the various functional recitations in the claims (Fig. 1, col. 2, lines 26-72, col. 3 and col. 4, lines 1-14). See marked up Fig. 1 from Gauthier below.



### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8 and 10-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koros (US 6,139,493) in view of Goss (US 2,532,162).

Koros discloses various elements of the claimed invention, as previously discussed. Regarding claim 11-16, Koros discloses an embodiment (Fig. 3) in which the adjustable blade has a tubular guide or opening provided on a surface or an

instrument engagement surface of the telescoping blade to support a light pipe or instrument for providing intense illumination to a surgical site (col. 6, lines 53-67).

Koros discloses all elements of the claimed invention except for longitudinal stops on the fixed blade.

Goss teaches providing a corrugated surface (with a series of stops defined by the troughs of the corrugated surface) on a supporting member so that a spring finger or leaf spring formed on the supported member is resiliently positionable in any one of the troughs to releasably hold the members against relative movement (Fig. 4 and col. 3, lines 5-19).

Therefore, it would have been recognized by one of ordinary skill in the art at the time the invention was made that applying the known technique of providing longitudinal stops, taught by Goss, to the fixed blade in the Koros blade system would have yielded predictable results, i.e., improved engagement between the movable blade and the fixed blade against relative movement.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anu Ramana whose telephone number is (571) 272-4718. The examiner can normally be reached Monday through Friday between 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached at (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AR  
December 1, 2008

/Anu Ramana/  
Primary Examiner, Art Unit 3775